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C O N F I D E N T I A L SECTION 01 OF 03 KHARTOUM 001092

SIPDIS

DEPARTMENT FOR A/S FRAZER, S/E WILLIAMSON, AND AF/SPG
NSC FOR PITTMAN AND HUDSON

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TAGS: [ASEC](#) [PGOV](#) [PREL](#) [KPKO](#) [UN](#) [AU](#) [SU](#)

SUBJECT: ICC INDICTMENT CHANGES THE DYNAMIC IN DARFUR;
OPPORTUNITY FOR FURTHER US ENGAGEMENT

REF: A. KHARTOUM 1090

[1](#)B. KHARTOUM 1088

[1](#)C. KHARTOUM 1074

[1](#)D. KHARTOUM 1065

Classified By: CDA Alberto M. Fernandez, for reasons 1.4 (b) and (d)

Background

[1](#)1. (C) Since Abuja and the signing of the still-born DPA in 2006, Darfur experts have been puzzling for two years on how to change the dynamic in Darfur in order to enable a political process to gain traction. There was hope following UNSCR 1769 that deployment of UNAMID would improve the security situation, thus allowing a possible renewed cease-fire that could be monitored more effectively by UNAMID. This has not been the case, as the security environment has become increasingly fragmented, complex, and chaotic, and UNAMID is well behind schedule in deploying although US efforts to push the process forward have yielded some results. The upcoming elections have also been seen by observers as something that might change the dynamic and provide an incentive to resolve the conflict in advance of the elections. However, the opposite seems to be occurring, with rebels and IDPs even more determined not to participate first in the recent census and later in elections until there is a political settlement as well as greater security in Darfur. The arrival of new Chief Mediator Djibril Bassole provides some hope for renewed energy and interest in intensive shuttle diplomacy, and Bassole's friendship with JSR Adada could translate into closer and more productive coordination between the JMST and UNAMID. However, the basic situation in Darfur remains the same, with splintered rebel groups unwilling to attend comprehensive peace talks and the Sudanese Government, which is trapped in an anarchic situation of its own making, cognizant that it needs a solution to Darfur but unsure how to proceed.

A Major Change in the Dynamic in Darfur

[1](#)2. (C) The ICC indictment of President Bashir changes the dynamic in Darfur (and all of Sudan) more dramatically than any of the factors described above, and could provide the leverage required to encourage the regime to take necessary steps toward peace in spite of rebel intransigence (it could also signal the beginning of a slow process of regime implosion). Contrary to the expectations of some observers, the regime has responded mildly and proactively to the possibility of an arrest warrant against President Bashir and is eager to prove that it is doing its part to resolve the conflict - in hopes of heading off the issuance of a warrant. The regime may be more flexible now than ever before, especially in the next three critical months before the ICC

announces whether it will issue a warrant for Bashir's arrest. Regime insiders such as Presidential Advisors Mustafa Ismail and Ghazi Salahudin and MFA State Minister Ali Karti (reftels) have told us they are looking for our assistance, and at the same time are eager to resume negotiations on improvements in US-Sudan relations. This provides a unique opportunity to engage with the regime and seek progress on the things that matter to us most in Darfur (outlined below - a roadmap for Darfur). If the regime does agree to take dramatic steps in Darfur and announce a major plan that would meet rebel and IDP demands, post proposes that A/S Frazer consider proposing to the PCC that the US could consider supporting a resolution at the UNSC to delay the indictment against President Bashir for a very limited period of a few months - with the understanding that if the regime does not live up to these promises, the US will not support a further delay and may take even tougher actions. If US support for a deferment on the Bashir indictment at the Security Council is not feasible given the political environment in the US (though a major shift in Sudanese policy to end the conflict in Darfur should be worth something to interest groups in the US) post proposes that A/S Frazer consider proposing to the PCC that the US consider a resumption in negotiations with the regime on steps to improve US-Sudan relations as the best tool available for moving regime in the right direction and maintaining stability in Sudan.

A Roadmap for Improved US-Sudan Relations

13. (C) Acknowledgment by the USG that relations between the

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two countries could improve over the next three years (a reasonable amount of time given the CPA horizon of 2011) if Sudan takes all the right steps would provide a major incentive for the regime to do the right things in Darfur and on the CPA, even if the ICC issues an arrest warrant for Bashir, because it would provide a tangible sign that the US does appreciate the positive steps the government has taken and encourages additional ones. But such a step must not come cheaply. Right now the regime is questioning whether it has anything to gain from continued cooperation with the US and the West (although of course the regime is well aware that things could be much worse and the US could take much more extreme actions, and we should continue to pass that message as well). In addition to finalizing the 30-60-90-day plan that SE Williamson has discussed with the regime, post proposes that the AF Bureau and the PCC consider a longer-term roadmap on improved US-Sudan relations, which would directly address the issues that the regime cares about most as well as our own priorities. Namely, we should indicate openly that if the regime fully implements the CPA, resolves the Darfur conflict, does not become engaged in other conflicts, and continues to cooperate on counter terrorism efforts, the US is open to lifting sanctions, removing Sudan from the State Sponsors of Terrorism List, and normalizing relations. As they always do, the regime will immediately accuse us of raising the bar in our negotiations while not living up to previous commitments. Nonetheless, the regime needs such a roadmap as political cover both from the ICC and to demonstrate to skeptics inside and outside the regime that it has gained something from engagement with the US. Lack of any outcome whatsoever from engagement with the US will embolden elements in the regime that may well decide, when and if the warrant against Bashir is issued, that there is little to gain from further engagement and that the regime should resolve Darfur and implement the CPA on its own terms.

This could have serious consequences for the stability of Sudan and the implementation of the CPA, and would potentially put the US on a path toward more serious actions in the future, which could also have a destabilizing effect. Since the Khartoum regime cannot be trusted, any such understanding has to be front-loaded with some of the key issues of concern to us to be solved up front rather than in

some hypothetical future when the regime may, once again, feel emboldened and defiant.

A Roadmap for Darfur

¶4. (C) As already envisioned by many astute observers both inside and outside the regime, a Darfur roadmap should include several critical elements: unifying Darfur as one state, transparent and verifiable compensation for Darfur victims, voluntary right of return for IDPs to their original lands, security guarantees for returning IDPs, an end to HAC harassment of IDP camps and NGOs, the right of each tribe to select who will be their legitimate leaders, a vice-presidential position for a leader from Darfur, full cooperation with UNAMID on security, a comprehensive and immediate humanitarian cease-fire (unilateral if necessary on the part of the government) with full access for monitoring by UNAMID, and an eventual comprehensive Darfur peace agreement that will include disarmament or integration of militia as well as rebel fighters, and guarantees of economic development and revenue sharing with Darfur. The government must also announce that it is ready to discuss these points immediately with rebel movements as well as civil society representatives, both in a comprehensive format as well as in shuttle discussions with the AU/UN Chief Mediator. The government may not be willing to announce all of these items immediately, in which case the US should withhold confirmation of a roadmap toward improved US-Sudan relations.

Many of these issues are dealt with in some fashion in the 2006 Darfur Peace Agreement but have not been implemented. A symbolic, but also essential, measure is also the expression of remorse or regret by the regime for the events of 2003-2005 in Darfur. Many of these items are actually under discussion within the regime, by the NCP and with the input of the SPLM and Sadiq al-Mahdi's Umma Party.

Consequences of Inaction

¶5. (C) A US vote at the Security Council in favor of deferment of the indictment should come at a very high price in terms of Sudanese actions on Darfur and CPA. If that price can be exacted, the USG should have the cover it needs to explain its actions to interest groups in the US. In

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addition to assurances of full CPA implementation and major plan for Darfur, Bashir should agree to turn Kushayb and Haroun over to the ICC now or (a more realistic option from the regime's perspective) to try them in Sudan and strip Haroun of his portfolio. If there is no possibility of a US vote in favor of deferment, engagement with the regime on a Darfur roadmap in exchange for a roadmap on US-Sudan relations will keep the regime and Sudan moving in the right direction. Lack of engagement now may portend a dramatic downturn in US-Sudan relations in the near future, as the regime becomes ever more convinced that it has received nothing from the US and that its perceived recent "good behavior" (a very relative term in Sudan) has not been acknowledged. This is not true, of course, since the US helped deliver the CPA, which has allowed for the current uneasy peace and substantial oil wealth to flow into the country, is the major bilateral donor to Sudan, and has consciously refrained from overthrowing the regime. However, an embattled Bashir and a regime that shuns further cooperation with the US, combined with a lack of progress in Darfur and on the CPA, spells disaster for the Government of National Unity and for Sudan in the long run. A push in the right direction now, either by supporting a deferment of the indictment against Bashir in exchange for significant concessions, or by continuing our discussions with the regime - defining our tough and explicit expectations and indicating what we will offer in return in the form of a roadmap - is the best option for keeping a fractious, flawed and unsavory regime (which did end the longest running civil war in

Africa) and Sudan on track. If we do decide to be helpful to Sudan, post strongly recommends that this be couched as a direct response to entreaties by the SPLM, thereby strengthening them and Salva Kiir on the domestic political scene.

FERNANDEZ